



The Comptroller General
of the United States

Washington, D.C. 20548

Bogart

135802

Decision

Matter of: 9-1-1 Emergency Number Fee, State of Tennessee

File: B-230691

Date: May 12, 1988

DIGEST

9-1-1 emergency service charges imposed by districts established in Tennessee under that state's Emergency Communications District Law are actually taxes and may not be paid by the federal government. These charges have the same characteristics as similar charges imposed under Florida, Maryland and Texas law and previously disallowed in B-215735.2, April 20, 1987, 66 Comp. Gen. ____; 65 Comp. Gen. 879 (1986); and 64 Comp. Gen. 655 (1985).

DECISION

By letter dated March 4, 1988, an authorized Certifying Officer of the United States Department of Agriculture (Department) asked for an advance decision concerning the propriety of paying 9-1-1 emergency service charges included on various invoices for telephone service received by the Department in Tennessee. Although these charges are levied under a Tennessee law that specifically provides that they shall not be construed as taxes and that they shall be payable as service charges by governmental entities, payment by the Department is prohibited by our recent line of decisions holding that 9-1-1 fees are not payable by the federal government.

BACKGROUND

9-1-1 systems in the State of Tennessee are authorized by the Emergency Communications District Law, Tenn. Code Ann., title 7, ch. 86 (hereafter cited by section number in ch. 86). This law authorizes the legislative body of any Tennessee municipality or county, acting by ordinance or resolution and upon approval of the eligible voters, to create a special district known as an emergency communications district (section 104). Each such district shall

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provide 9-1-1 emergency communications service through its respective provider of exchange telephone service (section 107). Districts may levy an "emergency telephone service charge" to fund the 9-1-1 service (section 108). The law places restrictions on the amount and number of such charges that may be imposed on individual service users and requires that such charges be imposed uniformly and in conformity with the available service within each district (id.). The provider of exchange telephone service is required to act as a collection agent on behalf of its district by adding 9-1-1 service charges onto its regular telephone billings and collecting and remitting them to the district (id.). In return, the law permits the provider to retain an administrative fee to cover its costs incurred on behalf of the district (id.).

DISCUSSION

We examined 9-1-1 service charges in B-215735.2, April 20, 1987, 66 Comp. Gen. ____; 65 Comp. Gen. 879 (1986); and 64 Comp. Gen. 655 (1985). We disapproved the charges in all three cases, holding that where 9-1-1 service is authorized or required by law to be offered and a service fee assessed to defray its costs, the charge amounts to a tax which the federal government may not constitutionally be required to pay. The facts do not differ appreciably in this case.

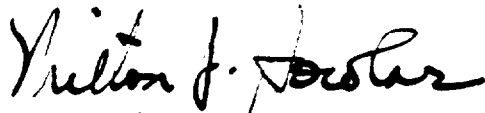
In 65 Comp. Gen. 879, we reiterated the characteristics of 9-1-1 service charges which make them constructive taxes. First, 9-1-1 service is provided by a local government or by a quasi-governmental unit. Second, public funding of the service requires legal authority, e.g., an ordinance or referendum. Third, the service charge is actually based on a flat rate per telephone line and is unrelated to levels of service. The 9-1-1 service charge assessed under the Tennessee Emergency Communications District Law fulfills all these criteria.

The fact that the Tennessee law characterizes these fees as service charges and stipulates that they shall not be construed as taxes (section 106) does not change our analysis. See B-227388, September 3, 1987. Likewise, the fact that the Tennessee law expressly authorizes the assessment of 9-1-1 service charges against governmental entities (section 106, as amended by 1987 Tenn. Pub. Act, ch. 94, § 7) is immaterial. See 49 Comp. Gen. 284 (1969). Also, we note that in an opinion in which he held that the Tennessee Emergency Communications District Law did not apply to the United States Government, the Attorney General of Tennessee stated that, "where the United States Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function is

immune from state regulation." 85 Op. Tenn. Att'y. Gen. No. 114 (April 12, 1985).^{1/} We are aware of no such federal statute which would authorize payment of 9-1-1 charges under the Tennessee Emergency Communications District Law.

Even though it is exempt from paying taxes, the United States remains entitled to the same municipal services as taxpayers receive, including police and fire protection. 49 Comp. Gen. at 286; 24 Comp. Gen. 599 (1945). We have applied this principle to telephone access to these services, finding that such access is an extension of the services themselves. B-215735.2, supra; 65 Comp. Gen. at 882. Hence, the Department remains entitled to 9-1-1 emergency service despite its tax-exempt status.

For the foregoing reasons, we conclude that payment of the 9-1-1 charges would be improper, and that the Department should withhold such charges from its payments for telephone services in Tennessee.



Acting Comptroller General
of the United States

^{1/} We are aware that, subsequent to the opinion by the Attorney General, the Tennessee legislature amended the law to specifically apply to "government entities." However, under the Constitution, only the Congress, not a state legislature, may make the federal government subject to state or local taxation.